

STATE OF MICHIGAN
DEPARTMENT OF LICENSING AND REGULATORY AFFAIRS
OFFICE OF FINANCIAL AND INSURANCE REGULATION

Before the Commissioner of the Office of Financial and Insurance Regulation

In the Matter of:

Brian Branch
System ID No. 0382456

Enforcement Case No. 11-11283

Respondent.

_____ /

Issued and entered
on 10/26, 2011
by Annette E. Flood
Chief Deputy Commissioner

CONSENT ORDER AND STIPULATION

I. FINDINGS OF FACT AND CONCLUSIONS OF LAW

1. On November 28, 2005, Brian Richard Branch, (Respondent), filed an application to obtain a resident producer license with a qualification in Accident and Health, and Life insurance. Subsequent to the original application, Respondent obtained a qualification in variable annuities on April 4, 2008.
2. As an applicant for a resident producer license, Respondent knew or had reason to know that Section 1239(1)(a) of the Michigan Insurance Code, as amended, MCL 500.100 *et seq.* (Code) stated at that time:

In addition to any other powers under this act, the commissioner may place on probation, suspend, revoke or refuse to issue an insurance producer's license or may levy a civil fine under section 1244 or any combination of actions for any 1 or more of the following causes:

- (a) Providing incorrect, misleading, incomplete, or materially untrue information in the license application.
3. Respondent certified and attested on the application under penalty of perjury "all of the information submitted in this application and attachments is true and complete" and that he was "aware that submitting false information or omitting pertinent or material information in connection with this application is grounds for license revocation or denial of the license and may subject [him] to civil or criminal liability."

4. The application asks under the Background Information Section:

Have you ever been convicted of a crime, had a judgment withheld or deferred, or are you currently charged with committing a crime?

5. Respondent answered "No" to the above question.
6. On December 21, 1982, Respondent pled guilty to Aggravated Assault, MCL 750.82, in the 6th Circuit Court in Oakland County, Michigan.
7. On July 11, 1983, Respondent was found guilty of misdemeanor malicious destruction of personal property \$100 or less, MCL 750.377A-B.
8. Respondent's action of checking "No" on his application for a resident producer license with two criminal convictions on his record gives rise to cause under Section 1239(1)(a) of the Code, MCL 500.1239(1)(a), to place on probation, suspend, revoke or refuse to issue a license to, or levy a civil fine.
9. At the time Respondent applied for his insurance producer license in 2005, Section 1205 of the Code, MCL 500.1205, stated in relevant part:

An application for a resident insurer producer license shall not be approved unless the commissioner finds that the individual meets all of the following:

(b) Has not committed any act that is a ground for denial, suspension, or revocation under section 1239

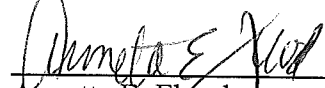
10. In accordance with Section 1239 of the Code as written in 2005, the Commissioner had discretion to determine whether or not Respondent's failure to disclose his two prior criminal convictions rose to such level of cause that the Commissioner had grounds for denial, suspension or revocation.
11. Taking into account that the misdemeanor convictions occurred over 20 years before the Respondent applied for his producer license in 2005, along with the nature of the convictions and the Respondent's record since, the Staff has determined the violation in question does not rise to a level of denial, suspension or revocation.
12. At the time of Respondent's violation of the Code, Section 1239 of the Code, MCL 500.1239 allowed the Commissioner to levy civil fines under Section 1244 for actions giving rise to cause under Section 1239(1) of the Code.
13. Based on the nature of the violation of the Code at the time Respondent applied for his license in 2005, a civil fine is appropriate.

II. ORDER

Based upon the parties stipulation to the Findings of Fact and Conclusions of Law above, it is **ORDERED** that:

- A. Respondent shall cease and desist from operating in a manner that violates Sections 1239 of the Code, MCL 500.1239.
- B. Respondent shall pay to the State of Michigan, through OFIR, a civil fine of \$500 within 30 days of the invoice date as indicated on the OFIR invoice.

**OFFICE OF FINANCIAL AND
INSURANCE REGULATION**



Annette E. Flood
Chief Deputy Commissioner

III. STIPULATION

1. Respondent has read and understands the consent order above.
2. Respondent agrees that the Chief Deputy Commissioner has jurisdiction and authority to issue this consent order pursuant to the Michigan Insurance Code.
3. Respondent admits the findings of fact and conclusions of law set forth above and agrees to the entry of this order.
4. Respondent admits that all parties have complied with the procedural requirements of the Michigan Administrative Procedures Act and the Michigan Insurance Code.
5. Respondent has had an opportunity to review the stipulation and consent order and has had the opportunity to obtain review by legal counsel.
6. It is further stipulated, by and between the parties hereto, that failure to comply with the terms set forth in this stipulation within sixty (60) days of the date of this order shall result in a suspension or continued suspension of all licenses or registrations held by

Respondent, under the Code, or in the denial of any license or registration renewal and the denial of future applications for licensure or registration until compliance is made with the terms of this stipulation. Unless otherwise specified in this stipulation, requirements imposed on the Respondent must be fulfilled within sixty (60) days of the date of mailing of this order.

7. It is further stipulated, by and between the parties hereto, that failure to comply with the terms set forth in this stipulation within six (6) months of the date of mailing of this order shall result in a revocation or continued revocation of all licenses or registrations held by Respondent, under the Code, or in the denial of any license or registration renewal and the denial of future applications for licensure or registration until compliance is made with the terms of this stipulation.
8. It is further stipulated, by and between the parties hereto, that the Chief Deputy Commissioner, or designee, must approve this stipulation before it is submitted for final approval. If the Chief Deputy Commissioner, or that person's designee, rejects this stipulation, OFIR will schedule a contested case hearing in this matter without prejudice to either party.
9. Respondent understands and intends that by signing this stipulation, Respondent is waiving the right, pursuant to the Code, the rules promulgated thereto, and the Administrative Procedures Act, 1969 PA 306, MCL 24.201 et seq., to a hearing before an administrative law judge, at which OFIR would be required to prove the charges set forth by presentation of evidence and legal authority and at which Respondent would be entitled to appear to cross-examine all witnesses presented and to present such testimony or other evidence or legal authority deemed appropriate as a defense to said charges.

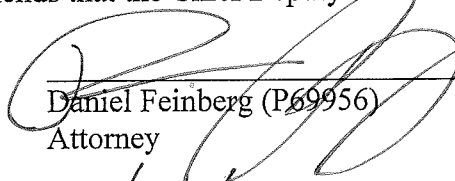


Brian Branch
System ID No. 0382456

10-7-2011

Date

OFIR staff approves this stipulation and recommends that the Chief Deputy Commissioner issue the above Consent Order.



Daniel Feinberg (P69956)
Attorney
10/12/11

Date